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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,797	06/20/2003	Eric D. Brill	MS1-4081US	9695
22801 7590 07/13/2009				
LEE & HAYES, PLLC 601 W. RIVERSIDE AVENUE SUITE 1400 SPOKANE, WA 99201				
EXAMINER				
HICKS, MICHAEL J				
ART UNIT		PAPER NUMBER		
2165				
MAIL DATE		DELIVERY MODE		
07/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* ERIC D. BRILL

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Application No. 10/600,797  
Technology Center 2100

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Mailed: July 13, 2009

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Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.  
Perry, Supervisory Paralegal Specialist, Review Team.

**ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER**

This application was electronically received by the Board of Patent Appeals and Interferences on July 7, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellant filed an Appeal Brief dated March 20, 2009. The Appeal Brief is not in compliance with 37 C.F.R. § 41.37(c) effective September 13, 2004.

According to 37 C.F.R. § 41.37(c)(v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of Claimed Subject Matter” appearing on pages 2-5 of the Appeal Brief filed March 20, 2009, is deficient because it does not map independent claims 1, 13, 22, 29, 34, 42, and 43 to the specification by line and page number. The Summary maps to the Published Application 20040260695. This is improper. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required

by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed March 20, 2009, defective, as required by 37 CFR § 41.37(d);
- 2) notify the Appellant to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);
- 3) acknowledge and consider any "paper" submitted by Appellant to correct the Appeal Brief; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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